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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,671	10/22/2001	James L. Jason JR.	10559/502001/P11794	2397
20985	7590	02/27/2006		
FISH & RICHARDSON, PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER HSU, ALPUS	
			ART UNIT	PAPER NUMBER
			2665	

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PN

<b>Office Action Summary</b>	<b>Application No.</b> 10/045,671	<b>Applicant(s)</b> JASON, JAMES L.	
	<b>Examiner</b> Alpus H. Hsu	<b>Art Unit</b> 2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21,23-30,32,33 and 35-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21,23-30,32,33 and 35-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. Applicant's arguments with respect to claims 1-21, 22-30, 32, 33, 35-40 have been considered but are moot in view of the new ground(s) of rejection.
2. Claims 1-21, 22-30, 32, 33, 35-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 5-6, claim 27, line 4, claim 36, line 6, claim 38, line 5, claim 40, line 5, it is unclear as to when the generation of fragment packets occurs. Does it occur whenever there is a data packet being transmitted along the path?

In claim 10, lines 1-4, it is confusing for reciting “**determining** at a receiving point, a **maximum data packet size** of a network path from a sending point to the receiving point **based on a size of a data packet transmitted** over the network path”. How can one determine a maximum data packet size based on the size of a data packet transmitted without any comparison?

In claim 17, lines 5-6, it is unclear as to when the at least a fragment of the data message is generated. Does it occur whenever there is a data message being transmitted along the path?

In claim 21, lines 7-8, it is unclear as to when the at least a fragment of the data packet is generated. Does it occur whenever there is a data packet being transmitted along the path?

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claims 1-21, 22-30, 32, 33, 35-40 are rejected under 35 U.S.C. 102(e) as being anticipated by ONO in U.S. Patent No. 6,751,234 B1, hereinafter referred as ONO.

Regarding claims 1-21, 22-30, 32, 33 and 35, ONO discloses a method of determining a maximum packet size for data packets sent along a network path by: sending a data packet along a path from a first network point to a second network point; along the path, generating fragment packets from the data packet; analyzing the size of at least one of the fragment packets relative to a maximum packet size; and depending on a result of the analysis, re-setting the maximum packet size based on the size of the at least one of the fragment packets (see column 4, lines 14-26, column 5, lines 27-36, 46-67, column 7, line 42 to column 8, line 13, Figures 1 and 2).

Regarding claims 36-40, ONO discloses a computer program embodied in a computer readable medium or a carrier wave, the program capable of configuring a computer to and a medium bearing intelligence configured to enable a machine to effect actions that: send a data packet along a path from a first network point to a second network point; along the path, generate fragment packets from the data; analyze the size of at least one of the fragment packets; and depending on a result of the analysis, re-set a maximum packet size based on the size of the one of the fragment packets.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Aoki et al., Chien et al., and Bahadiroglu are all cited to show the common feature of adaptive control of data packet size transmitted in communication network based on the comparison of a maximum packet size and fragmentation of data packet when exceeds the maximum similar to the claimed invention.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alpus H. Hsu whose telephone number is (571)272-3146. The examiner can normally be reached on M-F (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on (571)272-3134. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AHH



Alpus H. Hsu  
Primary Examiner  
Art Unit 2665